September 16, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Presentation**
National Broadband Plan for Our Future, GN Docket No. 09-51

Dear Ms. Dortch:

On September 15, 2009, Megan M. Delany, Vice President, Senior Counsel, Charter Communications, Paul Glist and Paul Hudson of the law firm of Davis Wright Tremaine LLP met with the following:

Tim Stelzig, Assistant Division Chief, Competition Division, Wireline Competition Bureau
Don Stockdale, Deputy Bureau Chief, Wireline Competition Bureau
Peter Bowen, Office of Strategic Planning and Policy Development
Ian Dillner, Wireline Competition Bureau
Marcus Maher, Wireline Competition Bureau
Alison Greenwald Neplokh, Media Bureau
Jessica Strott, Consumer Adoption Analyst, National Broadband Plan Task Force
Phil Bellaria, Director, Scenario Planning, National Broadband Task Force, Office of Strategic Planning and Policy Analysis
Shawn Hoy, Program Analyst

During the meeting, we discussed specific approaches to promoting the growth of broadband.

We discussed how allowing continued innovations, including innovations in network management, can enhance broadband Internet service and applications in the future. By contrast, a common carrier style of regulation would undermine the proven success of private investments.

We discussed how recent requests by electric utilities for a penalty pole attachment rental rate for broadband connections would constitute a "broadband tax" that would translate to a range of $4.95-$8.66 per Internet subscriber per month and $13.27-$23.23 per voice subscriber per month and working at cross purposes with national goals of deployment and affordability. By contrast, every reviewing tribunal, including the FCC, has upheld the current cable pole attachment rental formula as providing far more than just compensation for the use of monopoly utility poles.

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We discussed how the Commission should expand high-cost universal support to permit the subsidy of broadband facilities in certain unserved areas, and should expand the Lifeline and Link-up programs on a technology-neutral basis to subsidize low-income consumers' purchase of broadband and computers by underserved populations. Rather than asking consumers to pay even more than 13% of their interstate telecommunications charges to support USF, the Commission should pay for the expansion of the high-cost and low-income programs by phasing out high-cost support to inefficient carriers to provide telephone service in markets where other providers offer unsubsidized broadband and telephone service in the same market.

Very truly yours,

Charter Communications

Megan M. Delany

cc: Tim Stelzig
Don Stockdale, Jr
Peter Bowen
Ian Dillner
Marcus Maher
Alison Greenwald Neplokh
Jessica Strott
Phil Bellaria
Shawn Hoy

Enclosures

Non-Discrimination and the Growth of Broadband
National Broadband Plan for Our Future
Re: GN Docket No. 09-51
September 15, 2009

The Commission National Broadband Plan Inquiry raises significant questions about how best to promote investment in broadband, and what principles should apply to the "openness" of the Internet. It has made a point of soliciting specific and practical recommendations.

1. The Plan should not undermine the proven success of private investments made when freed of common carrier regulation

Private investment dwarfs public investment in broadband facilities. The cable industry has invested $145 billion since 1996. Charter alone has invested more than the entire broadband stimulus program. The *NOI* expressly recognized that the recipe for a successful national broadband plan includes the "dynamic innovations and flexibility of the private sector." The Commission should take great care not to undermine the environment that has built nearly all of our telecommunications infrastructure and that will, if allowed, be the primary source of new investment and innovation.

The comments of the parties calling for common carrier regulation of today's unregulated broadband market are a contradiction. They hail broadband, which most of them had never used only a handful of years ago, as the "must have" of the 21st century – yet they now propose to upend the dynamics that made it happen. And while they criticize the 20th century regulatory regime as outdated,[1] they somehow conclude by proposing to wrap that outdated common carrier regulatory regime of yesterday onto the services of tomorrow.

[1] Public Knowledge Comments at 1 ("Every aspect of U.S. telecommunications policy needs not only to be re-examined and revised, but in some cases done away with ….").

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Common carrier regulation has never been the right answer for interactive, innovative information services. Video dial tone was supposed to provide broadband capabilities to video providers on a common carrier basis, and failed. When Congress repealed the Commission's video dial tone, it explained: "Those rules implemented a rigid common carrier regime, including the Commission's customer premises equipment and Computer III rules, and thereby created substantial obstacles to the actual operation of open video systems."[2] Open Video Systems were the next installment, with the same premise, and failed to do any better.[3] These models, like most municipal wi-fi systems later, failed because they lacked a realistic business model that enabled the provider to profitably offer smart services over a dumb pipe.

2. Innovation in networks creates mutual benefits to network providers, consumers, and edge players

It is not enough to only allow innovation at the edge of the network by third parties. Innovation *in networks* creates mutual benefits to network providers, consumers, and edge players. Broadband is about much more than moving single streams of data between two locations, like a telegraph message or telephone service of old. Broadband service providers need flexibility to integrate equipment and multiple simultaneous services throughout the home and beyond, and to manage and prioritize these diverse services. Integrating "content" with "conduit" fueled the growth, deployment, and use of broadband networks. In addition, network owners need flexibility to innovate with different business models that can attract risk capital and strategic partners with the prospect of rewards. The resulting chaos of innovation may not offer the same stability as a common carrier regulated market, but it is where the many of the services of tomorrow, if we are to have them, will be born.

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[2] See Senate Report 104-230, 104th Cong., 2d Sess. at 179.
[3] OVS is generally recognized to be "a flop." M. Botein, Open video systems: too much regulation too late?, Federal Communications Law Journal, June 01, 2006.

3. "Preserving the Internet as we know it" must leave latitude for networks to innovate and for the Internet to evolve

Calls for common carrier regulation of broadband are often couched as a plan to "preserve the Internet as we know it." The Internet that we know was built in the absence of regulation, and not because of it. A plan premised on preserving the Internet of today is a recipe for derailing the better Internet of the future. What if government had sought to preserve the Internet we knew it in the early 1990s, when commercial use was generally prohibited? Or the Internet of the mid-1990s, when access meant dial-up? The Internet we know today would never have developed. What if government had sought to preserve television as we knew it, and regulated cable operators as common carriers to carry only broadcast stations, on a non-discriminatory basis? Cable could not have owned its own content, and we would have lost hundreds of channels of program diversity as well as new applications such as video on demand. Just as NTIA and RUS have left room for "managed networks" under the Recovery Act programs, we need to abandon an apparent suspicion of change and instead cultivate an environment in which network innovations may proceed.

Likewise, proponents of common carrier and nondiscrimination regulation of ISPs fail to address the fact that the Internet has thrived without these regulations. A decade ago, proponents of common carrier regulation were telling the FCC that its failure to require cable operators to provide open access to third-party ISPs would "jeopardize the innovative prospects for broadband Internet service in the future."[4] These persistent claims that the sky is falling need to be updated in light of the fact that years and years have now passed without these regulations,

[4] *Application for Consent to the Transfer of Control of Licenses MediaOne Group, Inc. to AT&T Corp.*, CS Docket 99-251, Written Ex Parte of Professors Mark Lemley and Lawrence Lessig, para 77.

and the sky is higher than ever – broadband adoption and speeds have only surged and Internet content and applications are vastly more rich and diverse than a decade ago.

4. Resale and multiple ISPs is not the answer

Notwithstanding the great successes of the past decade, Free Press contends that the Commission's policies have in fact led to a "failure" in comparison to broadband adoption and speeds available in some other countries, and because there are more ISP "choices" in some countries than are generally available in the United States. Charter urges the Commission not to too quickly draw conclusions from high-level snapshots of data that lack the deeper contextual analysis that is needed to predict the result that other policies would likely have in the United States in the long-run. Ultimately, the greatest benefit to consumers comes from the development of new services and technologies, and from efficiencies that lead to lower prices. Fixation on data points such as the "price per megabit" that consumers pay at a given moment in 2009 is no more relevant in the long run than the amount that happened to be paid per kilobit in 1996. Real economics and analysis should prevail over easy abstractions and easy analogies.

Similarly, the Commission should be less impressed with claims of the virtues of multiple ISPs in a market when the providers are simply reselling the services offered by the incumbent telephone carrier over the same facilities. Meaningful choices and competition are driven by intermodal competition that uses different technologies and different infrastructure. Short-term price competition might exist to a degree if a network operator were forced to offer below-cost access to its network, but that would not benefit consumers in the long-run because it would reduce investment in upgrades that would ultimately deliver more valuable services. Moreover, to the extent that the Commission seeks to evaluate the prospects for greater intramodal competition, it should start with the observation that competitive ISPs remain free to lease

unbundled copper loops from incumbent telephone companies to provide DSL. This form of competition in the residential market did take a dive earlier in this decade when the Commission eliminated line sharing, but a compelling CLEC competitor could once again compete by providing a DSL/VoIP combination over a full ILEC loop, without any changes in Commission rules. The fact that this ready option is not being widely used today should give the Commission pause before it considers reengineering its entire regulatory framework to try to encourage intramodal competition.

5. Networks must be allowed to employ reasonable network management, and edge application providers have a shared obligation to behave responsibly

Finally, the Commission must elevate itself above the rhetoric on network management. Management is a necessity of network operation, and the sophistication of such management will only grow as more demands are placed on it. Today the issue may be preventing the stutter in bit streams that are sensitive to latency. Tomorrow it may be assuring that critical parties can work from home during a pandemic. At all times, the network operator must protect the network from harm, such as denial of service attacks of the kind that recently shut down Twitter and hobbled Facebook. We agree that network operators should make clear what management techniques they employ. We believe that providers of edge applications should likewise accept a shared responsibility to behave in predictable ways that do not monopolize available bandwidth at the expense of other services. We do not protest transparency, as long as operators are not compelled to present a roadmap for malware to evade network management tools. But beyond that, attempting to adopt regulations that would limit the flexibility of providers to employ network management techniques to protect and develop the consumer experience will not increase either the availability or affordability of broadband service—and could undermine it.

Charter COMMUNICATIONS®

Releasing Broadband from the Pole Attachment Bottleneck
National Broadband Plan for Our Future
Re: GN Docket No. 09-51
September 15, 2009

The Commission National Broadband Plan Inquiry raises significant questions about the relationship of pole attachments to the deployment and affordability of broadband.

A significant cost component in delivering wireline broadband is access to utility poles. Thanks to an integrated IP-enabled broadband technology, the same network that carries cable video can provide high-speed Internet access and competitive voice services without occupying more space or adding more burden to utility poles. The direct savings to consumers in discounted digital voice bills average $11.19 per month per customer across the industry, or $6.8 billion to residential consumers over a five year period. The indirect consumer benefits multiply the effect, by facilitating delivery of "over the top" voice services by IP providers and thereby fomenting competition that pressures ILECs to lower their circuit switched prices for telephony. This larger impact is estimated to yield savings of approximately $70 billion to residential consumers over the next five years.

The utility industry is engaged in a vigorous campaign to increase charges on cable operators for carriage of Internet or IP enabled voice carried on the same wire as video. Their sought-after rate hike would impose an additional average cost of $4.95-$8.66 per Internet subscriber per month and $13.27-$23.23 per voice subscriber per month[1]—wiping out entirely the consumer benefits of VoIP, sheltering ILECs from needed competition, and providing a

[1] See Comments of Charter Communications in WC Docket No. 07-245, March 7, 2008, Tables 1-3 and Exhibits A & B.

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windfall for the electric utilities. These increases would be largest in rural areas, where an operator must attach to more poles per home passed – so they would make broadband deployment more expensive in the very same rural unserved and underserved areas where the Commission is most focused on encouraging it.

Raising pole rents with a new and massive "broadband tax" on cable operator Internet services would open a new, damaging, and counter-productive chapter in a long history of monopoly pole abuses. Congress adopted Section 224 to remedy the electric utility and telephone companies' monopoly over the distribution and use of utility poles in the public rights-of- way.[2] The Act was designed to halt the pole-owning utilities from "extract[ing] monopoly rents from cable TV systems in the form of unreasonably high pole attachment rates,"[3] and to bring them into line with actual costs.[4] The Act later served as a bulwark when electric utilities, now interested in telecommunications, tried to stop cable's deployment of fiber for data services.[5] As

[2] *See, e.g., NCTA v. Gulf Power Co.*, 534 U.S. 327, 330 (2002) (finding that cable companies have "found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. . . . Utilities, in turn, have found it convenient to charge monopoly rents.").

[3] S. Rep. No. 95-580, at 13 (1977), *reprinted in* 1978 U.S.C.C.A.N. 109, 121.

[4] The Act was intended to address the telephone companies' practice of leveraging their pole ownership into control over emergent communications markets, and to stop a history of onerous pole rents draining cable of capital otherwise available for competitive services. *Applications of Telephone Companies for Section 214 Certificates*, 21 F.C.C.2d 307, 323-29 (1970) (cable systems "have to rely on the telephone companies for either construction and lease of channel facilities or for the use of poles for the construction of their own facilities."); *General Tel. Co. of California*, 13 F.C.C.2d 448, 463 (1968) (by control over poles, telco is in a position to preclude an unaffiliated CATV system from commencing service).

[5] In *Heritage*, the Commission interpreted Section 224 to apply to operators installing fiber to provide cable and data services, and held that they could continue to pay the same cable rate for pole attachments. *Heritage Cablevision Assocs. of Dallas, L.P. et al. v. Texas Util. Elec. Co.*, FCC 91-379, 6 FCC Rcd 7099, 7101 ¶ 12 (1991) ("We believe that in light of the fact that Section 224 includes no language limiting the nature of the services of a cable operator to which it applies, Section 224 is most reasonably read to provide that a cable operator may seek Commission-regulated rates for all pole attachments within its system, regardless of the type of service provided over the equipment attached to the poles.") ("*Heritage*"), *recon. dismissed*, FCC 92-266, 7 FCC Rcd 4192 (1992), *aff'd, Texas Utils. Elec. Co. v. FCC*, 997 F.2d 925 (D.C. Cir. 1993).

the Commission put it in 2001: "Nothing in the record demonstrates that the utilities' monopoly over poles has since changed."[6]

Every reviewing tribunal, including the Commission, has upheld the current cable pole attachment rental formula as providing far more than just compensation for the use of monopoly utility poles. State PSCs are likewise trying to reduce barriers to broadband. They have specifically rejected a pole attachment rate penalty on broadband.[7]

Raising pole rents on broadband would be counter-productive to national broadband efforts. Pole rent increases will do nothing to promote broadband or to stimulate the economy. The Commission could reduce the costs of broadband and level the playing field by adopting a rule that would enable all broadband providers to pay rates established under the existing cable rate formula.

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[6] *Amendment of the Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, FCC 01-170, 16 FCC Rcd 12103, 12112-13 ¶ 13 (2001) ("*2001 Reconsideration Order*").

[7] *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, R.95-04-043, I.95-04-044, Decision 98-10-058, 1998 Cal. PUC LEXIS 879 (Oct. 22, 1998); *Proceeding on Motion of the Commission as to New York State Electric & Gas Corporation's Proposed Tariff Filing to Revise the Annual Rental Charges for Cable Television Pole Attachments and to Establish a Pole Attachment Rental Rate for Competitive Local Exchange Companies,* Order Directing Utilities to Cancel Tariffs, Case 01-E-0026, 2002 N.Y. PUC LEXIS 14, at *4 (Jan. 15, 2002); *Consideration of Rules Governing Joint Use of Utility Facilities & Amending Joint-Use Regulations Adopted Under 3 AAC 52.900 – 3 AAC 52.940*, Order Adopting Regulations, 2002 Alas. PUC LEXIS 489 (Oct. 2, 2002); *Petition of the United Illuminating Company For A Declaratory Ruling Regarding Availability of Cable Tariff Rate For Pole Attachments by Cable Systems Providing Telecommunications Services & Internet Access, Docket No. 05-06-01*, Decision, 2005 Conn. PUC LEXIS 295, at *11-12 (Dec. 14, 2005); *Rulemaking to Amend & Adopt Rules in OAR 860, Divisions 024 and 028, regarding Pole Attachment Use & Safety (AR 506) & Rulemaking to Amend Rules in OAR 860, Division 028 Relating to Sanctions for Attachments to Utility Poles & Facilities (AR 510),* Order No. 07-137, 2007 Ore. PUC LEXIS 115, at *24 (Apr. 10, 2007).

Providing Regulatory Clarity to Enable Ad-Supported Models
National Broadband Plan for Our Future
Re: GN Docket No. 09-51
September 15, 2009

The Commission National Broadband Plan Inquiry raises significant questions about the affordability of broadband and about the privacy interests in broadband services, and has made a point of soliciting specific and practical recommendations. Charter is deeply committed to respecting privacy, and wishes to draw the important connections between consumer privacy and affordability, so that any plan by the Commission be grounded in proven successes and on sustainable business models.

1. Targeted advertising can help make broadband more affordable

One means of promoting the affordability of broadband services is to foster an environment in which service providers have flexibility to seek more revenue from sources other than subscribers, such as advertisers. Consumers for years have taken advantage of the benefit of ad support for services, from broadcast radio and television to Google's Gmail. Consumers stand to benefit even more in the new information age, because advertisers are willing to pay much more (and thereby subsidize consumer services) when they are able to address their content to particular categories of consumers more likely to be interested in their products. Appropriate targeted advertising can meet advertisers' demands for greater accountability, consumers' desire for more relevant and engaging advertising, and the need for Internet content to find sustainable advertising models.

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2. Privacy concerns are not constraining broadband use

The *NOI* requested comment on the impact that targeted advertising has on consumers' willingness to use broadband services.[1] No party has presented compelling record evidence that significant numbers of consumers are deterred from using broadband because of concern of how their information might be used for advertising. We do not doubt that consumers responding to survey questions (generally asked without context) respond that privacy and security are important to them, but that does not translate into a specific reservation to use broadband because of information collected for use with advertising. For example, in the study that Public Knowledge cited in its comments, a majority of respondents "agreed or strongly agreed that they prefer having free access to online content that has advertising accompanying it (similar to television shows on commercial broadcasts) rather than having to pay for the content."[2]

3. Privacy protections should be grounded in reason, not suspicion

At the same time, however, there are very important and legitimate consumer privacy interests that need and deserve protection. Consumers must have trust for advertising to work. To that end, all participants in the broadband experience—including advertisers, Internet sites, and search engines, as well as network providers—should be providing consumers with the notice, choice, security, and accountability expected of responsible privacy practices. We need to cultivate practices that protect children and prevent the misuse of sensitive information. All participants need to offer consumer education drawing on the full range of technologies available to them, so that consumers will have meaningful information in advance with which to make informed choices. These can all be delivered in practical ways that do not undermine the use of

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[1] *NOI*, ¶ 59.

[2] Center for the Digital Future, Univ. of S. Cal., *Surveying the Digital Future: Survey Highlights,* April 28, 2009, *available at* www.digitalcenter.org/pdf/2009_Digital_Future_Project_Release_Highlights.pdf (cited by Public Knowledge Comments at 14, n. 20).

advertising to support the affordability of broadband, if the protections are grounded in reason and thoughtfully developed, rather than shaped by a visceral suspicion of online advertising.

4. All participants in the on-line economy should commit to privacy protections

Cable operators already operate under extensive privacy constraints, but the Commission should encourage all participants in the on-line economy to commit to these principles of self-regulation. If legislation is required to draw in parties who operate outside of privacy requirements, the legislation should preserve a role for meaningful self-regulation in appropriate safe harbors. Any rules should be applied not only to broadband service providers but also to all Internet sites and applications that collect or have access to user information. Greater certainty will provide more confidence and protection to consumers and will enable service providers to deliver better and more affordable services to their customers.

Reforming the Universal Service Fund to Ensure Universal Broadband Availability

National Broadband Plan for Our Future
Re: GN Docket No. 09-51
September 15, 2009

Charter is one of the largest broadband providers and is already the tenth largest telephone service provider in the country. More than half of the counties in which Charter provides service are majority rural, making Charter one of the very largest broadband providers in rural America. Charter's extensive broadband commitment to both urban and rural America enables it to offer a holistic perspective on the reforms that are needed to the universal service programs to modernize the fund for the broadband era.

First, there are two objectives that require a greater public financial commitment:

- for unserved areas, where it is uneconomic to provide robust broadband without ongoing operational subsidies, the Commission should expand high-cost universal support to permit the subsidy of broadband facilities, and
- for underserved populations, the Commission should expand the Lifeline and Link-up programs to subsidize low-income consumers' purchase of broadband and computers.

Second, consumers should not be asked to pay even more than 12% of their interstate telecommunications charges to support USF, and thus, the Commission should aim to pay for the expansion of the high-cost and low-income programs as described above through comparable or greater reductions in the existing high-cost program. Fortunately, there is a readily-available solution that can deliver all or nearly all of the ongoing support needed to fund the nation's universal broadband objective – the phase out of unnecessary subsidies paid to inefficient

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carriers to provide POTS telephone service in markets where other providers offer unsubsidized broadband and telephone service in the same market. Although the elimination of these outdated and unnecessary subsidies has eluded the Commission in the past, its importance is now greater than ever because it is the only viable means for the Commission to fund the goal of 100% universal broadband adoption.

1. Focus High-Cost Support in the Unserved Markets Where it is Most Needed

The vast majority of consumers already have access to terrestrial broadband service without any government subsidy. The cable industry alone reaches 92% of homes, and some of the remaining households are served by other providers. However, there are places where it is simply uneconomic to deliver robust broadband. In most cases, if the private market were able to fund broadband deployment in an area, it would have done so already. Those markets that remain unserved will likely remain so without some kind of assistance. As potential subscribers per mile decrease, a private business can find it difficult to justify the initial investment and ongoing operating expenses required to deliver wireline broadband to an area. While the Recovery Act infrastructure program will result in service to some of these areas, because it does not provide any ongoing operational subsidy and requires that projects be sustainable, its programs will not reach areas where the ongoing operating costs are too high to support an unsubsidized service.

A natural source of funding to provide such ongoing operational support in these high-cost areas is the Universal Service High-Cost program. To date, the high cost fund has been used only to support delivery of POTS voice communications. However, the Act prescribes that "Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and

information technologies and services."[1] Virtually no one disagrees that the communications market has now evolved to the point that broadband, and not a 64 kpbs POTS line, is the preferred communications methodology to connect society. Thus, Public Knowledge is correct that the "time has come to recognize that broadband, not voice, has become the 'must have' utility for the 21st Century" and that accordingly a "National Broadband Plan should have as its centerpiece a plan to reform USF" by replacing the archaic POTS-focused high-cost program with a program narrowly focused on delivering broadband where subsidies are truly needed.[2] Charter agrees that the Commission should expand and restructure the high-cost program to support broadband services and its telephone applications, and not only traditional telephone services.

2. Subsidizing Broadband Service and Computers for Underserved Low-Income Consumers

There are many more people who have access to broadband but do not buy it than there are people who cannot get it, and a majority of these consumers do not even own a computer. Few readily-achievable Commission policies could boost broadband adoption as quickly and significantly as new subsidies to support the ability of broadband providers to offer discounted service and computers or other broadband access devices to low-income consumers.

Accordingly, the Commission should develop a program similar to the Pilot Program recently considered for Lifeline and Link-Up,[3] but without the low budget cap that would constrain the national objective of universal broadband adoption. The Commission should permit participation on a technology-neutral basis by all broadband service providers who

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[1] 47 U.S.C. § 254(c)(1).

[2] GN Docket 09-51, Comments of Public Knowledge *et al.*, at 17-19 (June 8, 2009).

[3] *November 2008 Further Notice*, FCC 08-262, App. A, ¶¶ 64-91. The Commission also could encourage Congress to establish new direct subsidies or tax credits for low-income consumers for computer or broadband purchases.

commit to program criteria, without having to apply to become eligible telecommunications carriers. Such a policy is permissible under the Act, just as the Commission allows non-common carriers to participate in the USF Schools & Libraries program. Low-income consumers should not be limited to service only from traditional telephone companies and not other broadband service providers. As AT&T explained, permitting non-ETCs to participate in a broadband low-income program "would encourage participation by many new providers, including some cable operators and wireless companies" and that "[p]ermitting participation by wider range of providers will expand the scope of the Lifeline program and promote wider adoption of service by eligible consumers."[4]

3. How to Pay for Universal Broadband? Eliminate Unnecessary Subsidies in Commercially-Viable Markets

The expansion of USF to broadband as outlined above would require substantial additional dollars from the fund. Unfortunately, consumers cannot reasonably be expected to bear further increases to the already burdensome 12+% contribution rate. On the contrary, the Commission should be striving to significantly reduce this burden on consumers.[5] In addition, the Commission should not assess a per-connection charge or otherwise increase the contribution burden on residential broadband services, which would undermine Congress' direction to ensure the affordability of such services. Instead, the Commission should first look inward for program savings that could be used to support its new broadband agenda.

Fortunately, those potential reductions are there. As Free Press explains, "the FCC throws almost $5 billion per year down the drain by inefficiently supporting legacy telephone

[4] GN Docket 09-51, Comments of AT&T at 49-50 (June 8, 2009).

[5] Charter supports reform of the USF contribution methodology that would assess carriers on a per-telephone number basis. Charter believes that the Commission should not assess a per-connection charge or other assessments that would increase the cost of residential broadband services, which would undermine Congress' direction to ensure the affordability of such services.

technologies while 20 million rural Americans live in areas unserved by any broadband provider."[6] This is so because the existing high-cost loop methodology has a fundamental flaw rooted in a pre-broadband, one-technology era: it looks only at the carrier's costs, and not at the overall state of the market. For example, the current methodology cannot take into account the availability of new, lower-cost IP technologies; indeed, it disincents funding recipients from reducing their costs by using these new technologies, because doing so would lessen their existing support. Second, the formula fails to address the fact that carriers in marginally high-cost areas can recoup their investment through additional revenues from broadband, video and other services. As a result, vast amounts of money are distributed to areas where a communications last-mile network is economically viable without the need for any high-cost USF subsidy.

The best means to determine where high-cost subsidies are no longer needed is also straightforward and practical: a simple rule that no carrier can receive high-cost support to serve an area[7] where any other private, facilities-based service provider offers both telephone[8] and broadband service without a FUSF high-cost subsidy, at prices reasonably comparable to those services provided in urban areas. Where no such alternative provider exists, ETCs could

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[6] GN Docket 09-51, Comments of Free Press at 29 (June 8, 2009).

[7] The Commission should consider basing these determinations on small, neutral geographic areas such as census blocks rather than upon entire study areas, which were tailored to match the incumbent's service area. Alternatively, it could consider requiring only some degree of substantial overlap of the unsubsidized provider to the study area. The presence of an unsubsidized provider in a substantial area of overlap demonstrates that the area can be served without a subsidy, and any requirement that the unsubsidized provider serve the entire study area to trigger the exemption would perpetuate unnecessary over-subsidization. This over-subsidization does not just injure the unsubsidized competitors; it also overtaxes the consumers who contribute to USF and effectively deprives the Commission from deriving sufficient dollars from USF to fund the new broadband objectives.

[8] A POTS or interconnected VoIP service that connects to 911 and the Public Switched Telephone Network should qualify.

continue to receive high-cost support, and in fact could receive greater support than today because they could seek funding for broadband in addition to telephone.

Companies that would lose subsidies under this model will likely argue that the availability of unsubsidized service from a cable provider should not be a basis for withdrawing funding because not all consumers currently purchase broadband. This argument would prove too much. Universal broadband should be the ultimate goal of the program. The absence of universal broadband is a reason for change, and not a reason to keep the status quo.

4. An Unnecessarily Long Transition Would Delay Realization of Broadband Objectives.

A transition period may be appropriate to enable ETCs that would lose funding to migrate to more efficient technologies. However, the Commission should be mindful that any such period will delay its ability to fully fund new broadband investments. We therefore believe that Free Press' proposal for a ten–year phase out period for unnecessary subsidies is too long to wait. There is no adequate or even reasonable basis to perpetuate current subsidies that are wasteful and unnecessary, out of alignment with current goals, and shouldered by already heavily burdened consumers. The transition should be therefore completed as quickly as possible.

Conclusion

These proposals in tandem would provide up to the amount of the BTOP Infrastructure program on an annual basis to wire unserved America and subsidize broadband and computer adoption by underserved low-income consumers, likely without costing consumers a dime more than they are currently paying to support an outdated, largely ineffective program.